

16 Am. Jur. 2d Constitutional Law § 64

American Jurisprudence, Second Edition February 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IV. Construction of Constitutions

A. General Rules of Construction

§ 64. Effectuating intent of constitutional provision

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 584

The fundamental rule of constitutional construction is that courts must give effect to the intent of the people in adopting the amendment.¹ In interpreting a constitutional provision, the court's primary purpose is to effectuate the intent of both² those who framed the provision³ and those who adopted or voted for the provision.⁴ For instance, when interpreting a constitutional amendment adopted by citizen's initiative, the supreme court gives effect to the electorate's intent in enacting the amendment by giving words their ordinary and popular meaning,⁵ and looks beyond the amendment's language to ascertain the voters' intent only if the language is susceptible to multiple interpretations.⁶ The polestar of constitutional construction is voter intent, and a court is obligated to give effect to the language of a constitutional amendment according to its meaning and what the people must have understood it to mean when they approved it.⁷ Where a provision in a constitution is ambiguous, a court ordinarily must adopt that interpretation which carries out the intent and objective of the drafters of the provision and the people by whose vote it was enacted.⁸ The court generally discerns the framers' intent from the plain meaning of the language used and may only resort to extrinsic aids if the express language is vague or ambiguous.⁹ The intent of the drafters not expressed in the language of a ballot initiative is not relevant to interpreting a constitutional amendment adopted by initiative.¹⁰

Observation:

In construing a state constitution, citizen-enacted legislation, and legislatively enacted legislation, the object must always be to ascertain the will of the people.¹¹ A constitutional provision must never be construed in such a manner as to make it possible for the will of the people to be frustrated or denied.¹²

The starting point for determining the intent of the framers of a state constitution is the text of the instrument itself.¹³ Intent is to be found in the instrument itself,¹⁴ determined by the language of the provision being examined.¹⁵ The words used in a constitutional provision should be given the construction that effectuates the intent of its framers.¹⁶ The courts cannot ascribe to a constitution a meaning that is contrary to that clearly intended by the drafters, and they must undertake to ascribe to the words of a constitutional provision the meaning that the people understood them to have when the provision was adopted.¹⁷

When seeking the intent of the drafters in interpreting a constitution, a court keeps in mind the object desired to be accomplished and the evils sought to be prevented or remedied,¹⁸ as well as the purpose of the provision and the historical context in which it was written.¹⁹

When courts interpret an undefined constitutional term, courts examine the common law as it existed at the time the constitutional provision was enacted, the constitutional debates that bore on the undefined term, the plain meaning of the term at the time the constitutional provision was adopted, and the earliest interpretation in laws passed shortly after the adoption of the constitutional provision or court opinions that interpreted the provision.²⁰ Thus, where definitions for terms are not given in a state constitution, a court's primary task in construing the terms in a constitutional amendment is to ascertain and give effect to the intent of those who adopted the amendment.²¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Pestka v. State, 493 S.W.3d 405 (Mo. 2016).
- 2 Sierra Club v. Department of Transportation of State of Hawai'i, 120 Haw. 181, 202 P.3d 1226 (2009), as amended, (May 13, 2009); Bommer ex rel. Bonner v. Daniels, 907 N.E.2d 516, 245 Ed. Law Rep. 412 (Ind. 2009).
- 3 Cain v. Horne, 220 Ariz. 77, 202 P.3d 1178, 242 Ed. Law Rep. 435 (2009); Riley v. Rhode Island Dept. of Environmental Management, 941 A.2d 198 (R.I. 2008).
- 4 Heath v. Kiger, 217 Ariz. 492, 176 P.3d 690 (2008); Barrett v. Tennessee Occupational Safety and Health Review Com'n, 284 S.W.3d 784 (Tenn. 2009).
- Courts may not properly interpret a constitutional amendment adopted by voter initiative in a way that the electorate did not contemplate as the voters should get what they enacted, not more and not less. *American Civil Rights Foundation v. Berkeley Unified School Dist.*, 172 Cal. App. 4th 207, 90 Cal. Rptr. 3d 789, 242 Ed. Law Rep. 285 (1st Dist. 2009).
- 5 Dwyer v. State, 2015 CO 58, 357 P.3d 185, 322 Ed. Law Rep. 1111 (Colo. 2015).
- 6 Dwyer v. State, 2015 CO 58, 357 P.3d 185, 322 Ed. Law Rep. 1111 (Colo. 2015).
- 7 Benjamin v. Tandem Healthcare, Inc., 998 So. 2d 566 (Fla. 2008).
- 8 Ford v. Browning, 992 So. 2d 132 (Fla. 2008).
- 9 Crites v. Lewis and Clark County by and through County Attorney, 2019 MT 161, 396 Mont. 336, 444 P.3d 1025 (2019).

10 Mesa County Bd. of County Com'rs v. State, 203 P.3d 519, 242 Ed. Law Rep. 448 (Colo. 2009).
11 Opinion of the Justices, 2017 ME 100, 162 A.3d 188 (Me. 2017), as revised, (Sept. 19, 2017).
12 Ford v. Browning, 992 So. 2d 132 (Fla. 2008).
13 Claribal v. Department of Education, 145 Haw. 69, 446 P.3d 986, 369 Ed. Law Rep. 398 (2019).
14 Sierra Club v. Department of Transportation of State of Hawai'i, 120 Haw. 181, 202 P.3d 1226 (2009), as
amended, (May 13, 2009).
15 Matthews v. Funck, 2007 OK CIV APP 15, 155 P.3d 852 (Div. 2 2007).
16 Abrams v. Lanone, 398 Md. 146, 919 A.2d 1223 (2007).
17 Jefferson County Fire Protection Districts Ass'n v. Blunt, 205 S.W.3d 866 (Mo. 2006) (holding modified on
other grounds by, City of Normandy v. Greitens, 518 S.W.3d 183 (Mo. 2017)).
18 Myers v. City of McComb, 943 So. 2d 1 (Miss. 2006).
19 Meador v. EMC Mortg. Corp., 236 S.W.3d 451 (Tex. App. Amarillo 2007).
20 Koschke v. Taylor, 2019 WI 76, 387 Wis. 2d 552, 929 N.W.2d 600, 367 Ed. Law Rep. 1091 (2019).
21 Arthur v. City and County of Denver, 198 P.3d 1285 (Colo. App. 2008).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.